

WAGANAKISING ODAWAK STATUTE
CRIMINAL PROCEDURES

SECTION I. SHORT TITLE

This Statute may be cited as the “Criminal Procedures,” and it repeals and replaces Criminal Code, WOS 1997014; WOTCL 9.101 and Checking, Draft or Order for Payment of Money, WOS 2004-05; WOTCL 9.401

SECTION II. PURPOSE

The purpose of this Statute is to set forth the Tribe’s jurisdiction and sovereign right to exercise its power to prohibit certain conduct as a matter of public policy within its territory.

SECTION III. DEFINITIONS

A. “Adult” means any person over eighteen (18) years of age for purposes of criminal jurisdiction.

B. “Charges” means the complaint filed by the Prosecutor.

C. “Convicted” means that the offender has been subject to penal consequences based on the conviction, however the conviction was styled. This applies to adult offenders and juveniles who are prosecuted as adults.

D. “Imprisonment” means incarceration pursuant to a conviction, regardless of the nature of the institution in which the offender serves the sentence. This term must be interpreted broadly to include, for example, confinement is a state “prison” as well as in a local or Tribal “jail.”

E. “Indian” means a person who is a citizen of a federally recognized Indian Tribe.

F. “Indian Tribe” means any federally recognized Tribe.

1
2 **G.** “Minor” or “Juvenile” means an individual who has not attained the age of eighteen (18)
3 years.

4
5 **H.** “Non-Indian” means any person who is not a citizen of a federally recognized Indian
6 Tribe.

7
8 **I.** “Territorial jurisdiction of the Little Traverse Bay Bands of Odawa Indians” means
9 “areas referenced in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries
10 *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third*
11 *and fourth’ of the Treaty of 1855, 11 Stat. 621.” Little Traverse Bay Bands Constitution, Article*
12 *V(A)(1)(a).*

13
14 **J.** “Tribal Court” means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

15
16 **K.** “Tribal Citizen” means a person who is an enrolled citizen of the Little Traverse Bay
17 Bands of Odawa Indians.

18
19 **L.** “Tribe” means the Little Traverse Bay Bands of Odawa Indians or LTBB.
20

21
22 **SECTION IV. CRIMINAL JURISDICTION**
23

24 **A.** Criminal jurisdiction of the Tribe extends to adult LTBB citizens and adult citizens of
25 Federally Recognized Tribes, however, upon motion of the Tribal Prosecutor the Judge has the
26 discretion to try a minor as an adult within the jurisdictions of Violence Against Women
27 Reauthorization Act of 2013 (VAWA).
28

29 **B.** The Violence Against Women Reauthorization Act of 2013 (VAWA), S.47, 113th
30 Congress, 2013-2015, was reauthorized and amended by Congress in 2013 affirming the tribes’
31 inherent power to exercise “special domestic violence criminal jurisdiction” (SDVCJ) over all
32 persons, regardless of their Indian or non-Indian status. Under VAWA LTBB has limited
33 criminal jurisdiction over non-Indian defendants only for the following crimes: dating violence,
34 domestic violence, violations of protection orders, and other crimes when committed in the
35 context of a dating or domestic relationship. The limited jurisdiction applies where a person is an

1 Indian, a person lives or works in the territorial jurisdiction of LTBB, or a person's spouse,
2 intimate partner, or dating partner is an Indian. Such special jurisdiction may only be exercised
3 when a person is charged with one (1) of the crimes in the Domestic Violence Statute and may
4 be imprisoned up to three (3) years, a fine of up to \$15,000.00, in accordance with Tribal Law
5 and Order Act (TLOA), PL 111-211, Jurisdiction.

6
7 **C.** The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by Congress
8 in 1968. The Tribe's jurisdiction is limited to punishments that may impose up to a one (1) year
9 jail term and a fine up to \$5,000.00.

10
11 **D.** TLOA, PL 111-211, was enacted by Congress in 2013. The Tribe's jurisdiction is
12 extended to punishments that may impose up three (3) years imprisonment and a fine up to
13 \$15,000.00, up the enactment of a Tribal Council Resolution.

14 15 16 **SECTION V. REQUIREMENTS FOR SEARCHES AND SEIZURES**

17
18 **A.** A search warrant may be issued by the Tribal Court authorizing law enforcement to
19 search a specified place for evidence even without the occupant's consent, provided the
20 following requirements are met:

21
22 **1.** By affidavit, law enforcement shall show that probable cause that a crime has
23 been or is being committed exists and believe a search is justified when, under the totality
24 of the circumstances, a reasonable person would conclude that evidence of a crime will
25 be found where law enforcement want to search.

26
27 **2.** Any search warrant issued must contain sufficient information that particularly
28 describes the place to be searched and describe the items to be seized in such a way that
29 limits the legitimate scope of the search both spatially and temporally.

30
31 **B.** After executing a search warrant, law enforcement shall return a copy of the search
32 warrant to the Tribal Court, and include a list of what was seized and a copy of the receipt for
33 seized property that was given to the person searched.

C. Law enforcement may briefly detain a person when the officer has a reasonable and articulable suspicion that crime is afoot in order to confirm or dispel the officer's suspicion. If an officer has a reasonable and articulable suspicion that the suspect is presently armed and dangerous, the officer may conduct a limited search of the suspect's outer clothing for the limited purpose of looking for weapons.

SECTION VI. CHARGES and ARRAIGNMENT

A. Only the prosecutor may bring forth charges for crimes committed under this Statute.

B. Charges must include the following:

1. The name and address of the Tribal Court.
2. The name of a person, if known, or some other name if not known, plus whatever description of a person is known.
3. The signature of the prosecutor and his or her typewritten name.
4. Facts that support the jurisdiction of the Tribe.
5. The alleged crime committed, along with the Statute and Code section of the alleged crime, and the minimum and maximum possible penalty. Also, a statement by the Prosecutor as to whether or not the punishment of imprisonment, in accordance with the Sentencing Guidelines, will be requested by the Prosecutor.
6. The location where the offense was committed.
7. A short, concise statement of the alleged act or omission.
8. The person against whom, or against whose property, the offense was committed.
9. The approximate date and time of the commission of the offense.

1 **10.** The designation of Indian or non-Indian status.

2
3 **C.** Charges must be filed with the Tribal Court within seventy-two (72) hours if a person is
4 being held in law enforcement custody.

5
6 **D.** An arraignment must be conducted in open court, upon the appearance of the accused in
7 response to a summons or citation or, if the accused was arrested and confined, within
8 seventy-two (72) hours and must consist of the following:

9
10 **1.** Ensuring that a person has a copy of the charges.

11
12 **2.** Reading of rights, including the right to be represented by an attorney, as follows:

13
14 **a.** To testify on his or her own behalf, or to refuse to testify regarding the
15 charge against him or her. However, once a defendant takes the stand to
16 testify on any matter relevant to the immediate proceeding, he or she shall
17 be deemed to have waived all right to exercise his or her right to remain
18 silent and may be cross-examined.

19
20 **b.** To confront and cross-examine all witnesses.

21
22 **c.** To compel by subpoena the attendance of witnesses.

23
24 **d.** To have a jury trial of not less than seven (7) persons for any offense
25 punishable by imprisonment, if the charges include a statement by the
26 prosecutor requesting the punishment of imprisonment.

27
28 **e.** To have a speedy and public trial. The defendant and the Tribe are
29 entitled to a speedy trial and resolution of all matters before the Tribal
30 Court. The court has the responsibility to establish and control a trial
31 calendar. In assigning cases to the calendar, and insofar as it is practical,
32 the trial of criminal cases must be given preference over the trial of civil
33 cases, and the trial of defendants in custody must be given preference
34 over other criminal cases.

1 f. To appeal consistent with LTBB's Rules of Appellate Procedures.

2
3 g. Not to be prosecuted by the Tribe twice for the same offense.

4
5 h. To a fair trial and due process of law.

6
7 3. Reading of the charges; and then

8
9 4. Asking the defendant to enter a plea of guilty, not guilty, or no contest.

10
11
12 **SECTION VII. REQUIREMENTS FOR CONVICTION**

13
14 **A. Culpability.** A person must not be guilty of an offense unless that person acted
15 intentionally, maliciously, knowingly, recklessly or negligently as the law requires with respect
16 to each material element of the offense. However, any material element of an offense that does
17 not require a mental state may be established by proving that the person participated in the
18 prohibited conduct regardless of that person's state of mind.

19
20 **B. Burden of Proof.** No person may be convicted of an offense unless the Tribe proves each
21 element of the offense beyond a reasonable doubt. Reasonable doubt is not a mere possible
22 doubt, a speculative, imaginary or forced doubt. If each element is not proven beyond a
23 reasonable doubt, the Tribe has not met its burden of proof.

24
25 **C. Intoxication.** Intoxication is not a defense unless it negates an element of the offense.
26 Self-induced intoxication cannot negate the element of recklessness or negligence.

27
28 **D. Statute of Limitations.** No person may be prosecuted, tried, or punished for any criminal
29 offense unless the prosecution is initiated within one (1) year after both of the following
30 conditions are met:

31
32 1. Discovery that an offense has been committed; and

33
34 2. Discovery of the identity of the person who allegedly committed the offense.

- 1 **3.** The Tribal Court may suspend the time limitation for the amount of time that a
2 person no longer within the Tribe's jurisdiction.

3
4 Statute of Limitations does not apply to charges of Criminal Homicide.

5
6 **E. Multiple Counts.** When the conduct of a defendant establishes the commission of more
7 than one offense, a person may be prosecuted for each offense, unless:

- 8
9 **1.** One offense consists only of an attempt to commit the other;
10
11 **2.** Inconsistent findings of fact are required to establish commission of the offenses;
12 or
13
14 **3.** The offenses differ only in that one prohibits a designated kind of conduct
15 generally, and the other prohibits a specific instance of such conduct.

16
17
18 **SECTION VIII. AFFIRMATIVE DEFENSES AND ALIBI**

19
20 **A. Duress.** Duress is an affirmative defense that a person was coerced against his or her will
21 by the use of, or threatened use of, unlawful force against a person's person or the person of
22 another. The coercion must be such that a person of reasonable firmness would be unable to
23 resist.

24
25 **B. Protection of Self, Property, or Another Person.** The use of reasonable force toward
26 another person is justified and is an affirmative defense if the following requirements are met:

- 27
28 **1.** The force is directed toward someone who is using unlawful force; and
29
30 **2.** The person using such force reasonably believes the use of force is necessary for
31 his or her protection or that of a third person.

32
33 **C. Alibi.** The defense of alibi is used when the accused was somewhere else when the crime
34 was committed, and must be treated procedurally as an affirmative defense.

1 **D. Mental Infirmity, Disease, or Defect.** Mental infirmity, disease, or defect is an
2 affirmative defense that because of a condition a person did not know what he or she was doing
3 or the consequences of those actions or although a person knew what he or she was, but did not
4 know it was wrong.

5
6 **E. Lawful Possession of a Controlled Substance.** Lawful possession of a controlled
7 substance is an affirmative defense when the substance was lawfully obtained from a practitioner
8 or pursuant to a valid prescription or order of a practitioner while acting in the course of the
9 practitioner's professional practice.

10
11 **F. Entrapment.** Entrapment is an affirmative defense if a person:

- 12
13 1. Was induced or encouraged to engage in the conduct of the crime charged for
14 purposes of obtaining evidence of the commission of a crime;
- 15
16 2. Engaged in conduct as a direct result of the inducement or encouragement;
- 17
18 3. The person who induced or encouraged a person was a law enforcement officer or
19 a person acting as an agent of a law enforcement office;
- 20
21 4. The person who induced or encouraged a person used methods of persuasion or
22 inducement that created a substantial risk that the crime would be committed by a person
23 other than one who was ready to commit it; and
- 24
25 5. Was not a person who was ready to commit the crime.

26
27 **G. Self-Defense.** Self-defense is an affirmative defense if the death or injury to a person
28 resulted from the justifiable use of deadly force where a person reasonably believed that the
29 force was necessary to prevent imminent death or great bodily harm to him or herself.

30
31 **H. Procedures for Raising an Affirmative Defense.** The procedures for raising and
32 pleading affirmative defenses are specified by LTBB Court Rule.

33
34 **I. Burden of Proof Required for an Affirmative Defense.** Affirmative defenses are
35 proven under the preponderance of evidence standard. This means that the fact finder must be

1 persuaded that each element of the affirmative defense was more probable than not. Once the
2 burden is met, the burden shifts to the Tribe to disprove the affirmative defense beyond a
3 reasonable doubt.
4
5

6 **SECTION IX. COUNSEL**

7
8 **A. Representation of Accused.** Any person accused of an offense under this Statute may
9 represent him or herself before the Tribal Court, or may be represented by a person duly licensed
10 to practice before the Tribal Court at his or her own expense, unless otherwise indicated by law
11 or court rule.
12
13

14 **SECTION X. SENTENCING**

15
16 **A.** The Tribal Court shall consider the following in sentencing a defendant:
17

- 18 **1.** Whether the crime is a misdemeanor or a felony;
19
- 20 **2.** Whether the crime is punishable by up to one hundred and eighty (180) days of
21 imprisonment, up to one (1) year or up to three (3) years;
22
- 23 **3.** A person's relationship to the criminal justice system, such as whether a person is
24 currently incarcerated, on parole or probation, or has no relationship;
25
- 26 **4.** Whether a person is a repeat or habitual offender, including the number of
27 previously committed crimes and the seriousness of the previous crimes;
28
- 29 **5.** The degree of physical injury to a person;
30
- 31 **6.** The degree of psychological injury to a person;
32
- 33 **7.** The number of victims involved;
34
- 35 **8.** The absence of any violent activity during the commission of the crime;

9. The absence of any weapons used during the commission of the crime;
10. A person was under an extreme mental or emotional disorder or delusion;
11. A person was an accomplice and had only minor participation in the commission of the crime;
12. A person committed the crime under a reasonable belief of moral justification or necessity;
13. The age and maturity of a person;
14. A person acted under duress or substantial domination of another person;
15. The value of any property obtained, damaged, or destroyed; and
16. The degree of intoxication during the criminal act.

B. The Tribal Court may use appropriate rehabilitative or probationary terms as remedial measures, such as batter's intervention, inpatient or outpatient drug treatment or participation in a drug treatment court, probation with any probation conditions required or authorized by law, residential probation, probation with jail, probation with special alternative incarceration, mental health treatment, mental health or substance abuse counseling, jail with work or school release, jail with or without authorization for day parole, participation in a community corrections program, community service, house arrest, or electronic monitoring, suspension of licenses, provided that it defines what facts and circumstances would allow for the remedial measures to be taken into consideration.

C. Forfeiture of Weapons. The Tribal Court may order forfeiture of a firearms and ammunition if it is proven to have been used in the commission of a crime.

D. Victim's Impact Statement. Prior to sentencing, the Tribal Court must inform a person(s) of their right to submit a written statement to the court detailing the physical, material, and emotional damages that they suffered as a result of the offender's actions. The Judge has

1 discretion to allow oral testimony regarding such damages in addition to or in lieu of the written
2 statement.

3
4
5 **SECTION X. BAIL and FAILURE TO APPEAR**
6

7 **A.** The Tribal Court may set bail amount for the defendant to obtain release from law
8 enforcement custody, including the use of cash bond, surety bond, personal recognizance or
9 release on a citation.

10
11 **B.** The Tribal Court will consider the following criteria in determining whether or not to
12 grant release on bail:

- 13
14 1. Seriousness of the offense;
15 2. Protection of the victim;
16 3. Protection of the community from further offending;
17 4. Strength of the prosecution's case;
18 5. Severity of the possible sentence;
19 6. Probability of conviction;
20 7. Prior criminal history of the accused;
21 8. Potential interference with witnesses;
22 9. Court delay;
23 10. Requirements for preparing a defense;
24 11. View of the police and prosecution.
25

26 **C.** If a person fails to appear while released on bail, the Tribal Court may issue a warrant for
27 their arrest.
28
29

30 **SECTION XI. ABSTRACTING CRIMINAL RECORDS**
31

32 After a conviction in Tribal Court, the court will submit the criminal record and any criminal
33 history to the State of Michigan.
34
35

1 **SECTION XII. SEVERABILITY**

2
3 If any section, subsection, paragraph, sentence, phrase or portion of this Statute is, for
4 any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion
5 shall be deemed a separate, distinct and independent provision and such holding shall not affect
6 the validity of the remaining portions thereof.
7

8
9 **SECTION XIII. EFFECTIVE DATE**

10
11 Effective upon signature of the Executive or 30 days from Tribal Council approval
12 whichever comes first or if the Executive vetoes the legislation, then upon Tribal Council
13 override of the veto.
14

15
16 **SECTION XIV. OTHER RELATED STATUTES**

17
18 See Crimes, Sex Offense, Sex Offender Registration and Notification Statute, Felony Defined
19 Statute, Domestic Violence Statute, Victim's Rights Statute, Personal Protection Orders and No
20 Contact Orders and Violations of Protective Orders, Medical Marijuana Patient Protection, or as
21 may be amended.
22

23
24 **CERTIFICATION**